

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE VETERANS HOMES BOARD**

In the Matter of the Appeal of the  
Discharge of Leland Burton from the  
Minnesota Veterans Home – Silver Bay

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 10:00 a.m. on Monday, April 5, 1999, in the conference room at the Law Enforcement Center in Two Harbors, Minnesota.

Donald E. Notvik, Assistant Attorney General, Suite 200, 525 Park Street, St. Paul, Minnesota 55103-2106, represented the Minnesota Veterans Home – Silver Bay (the Veterans Home). Because of his medical condition and disabilities, Leland Burton was not present at the hearing, but he was represented at the hearing by Arlene Burton, 4403 River Lane, Eveleth, Minnesota 55734, his wife, personal representative, and responsible party. The record closed on April 5, 1999, when the hearing ended.

**NOTICE**

This Report is a recommendation, not a final decision. The Minnesota Veterans Homes Board (the Board) will make the final decision after reviewing the hearing record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minnesota Law,<sup>[1](#)</sup> the Board may not make its final decision until after the parties have had access to this Report for at least ten days. During that time, the Board must give parties adversely affected by this Report an opportunity to file objections to the Report and to present argument supporting their positions. Parties should contact Richard Zierdt, Executive Director, Minnesota Veterans Homes Board, Veterans Service Building, Room 122, 20 West 12th Street, St. Paul, Minnesota 55155, telephone (651) 296-2076, to find out how to file objections or present argument.

**STATEMENT OF THE ISSUES**

Whether Mr. Burton should be discharged from the Minnesota Veterans Home – Silver Bay because his account is delinquent.

Whether Mr. Burton should be discharged from the Minnesota Veterans Home – Silver Bay because of a failure to make full payment of the maintenance charges that were established in his Admission Agreement.

Based upon the record in this matter, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Leland Burton is a veteran of the armed forces of the United States.<sup>[2]</sup> Because of his current medical condition and disabilities, he has been unable to conduct his own affairs.<sup>[3]</sup> His wife, Arlene, has been serving as his personal representative in dealings with the U. S. Department of Veterans Affairs (USDVA) and the Minnesota Veterans Home – Silver Bay (Veterans Home), and both of those agencies have recognized her as his personal representative.<sup>[4]</sup>

2. On July 2, 1997, Mrs. Burton signed an Admission Agreement for her husband under which the Veterans Home agreed to provide Mr. Burton with residential care and nursing services, and Mrs. Burton agreed to pay a monthly maintenance charge from retirement benefits that her husband was receiving from various sources.<sup>[5]</sup> Paragraphs 5, 6, and 7 of that Admission Agreement provide that:<sup>[6]</sup>

“5. CALCULATION OR (sic) MAINTENANCE CHARGE. Your maintenance charge is calculated according to Minnesota Rules, parts 9050.0500 to 9050.0900, and is based upon your financial ability to contribute to payment of your cost of care. You must provide accurate financial information to the Home so that your maintenance charge can be correctly determined. Based upon the Home's calculation of your income, assets, and other sources of benefits that are available to pay for your cost of care, your maintenance charge is \_\_\_\_\_. A detailed calculation of the determination of your maintenance charge has been provided to you by the Home.”

“6. CHANGES IN FINANCIAL CONDITION. We will review your maintenance charge and recalculate it when your income changes and during your annual maintenance charge review. You must report any changes in your financial condition to the business office within ten (10) days of your learning of the change. We will recalculate your maintenance charge if you receive any kind of retroactive lump sum income for a period which coincides with your stay at the Home. If your maintenance charge increases as a result of your retroactive lump sum income, you must pay an adjusted maintenance charge for the period of your stay that coincides with the period for retroactive payment of your income.”

“7. RESIDENT’S OBLIGATION TO PAY MAINTENANCE. You must pay your maintenance charge by the due date. Payment is due by the last day of the month. If you do not pay your maintenance charge by the due date, the Home will notify you that your account is delinquent. In accordance with Minnesota Statute 334.01, simple interest may be charged by the Home on delinquent accounts. We may discharge you from the Home for not paying your maintenance charge by the due date.”

3. The Veterans Home calculated Mr. Burton’s monthly maintenance charge in the way that was specified in his Admission Agreement and in applicable Minnesota rules.<sup>[7]</sup> In calculating that monthly maintenance charge, the Veterans Home deducted and excluded an amount that the Board’s rules indicated was necessary to meet Mrs. Burton’s basic needs.<sup>[8]</sup> The Veterans Home also ignored \$90.00 of Mr. Burton’s monthly income to provide him with a personal needs allowance.<sup>[9]</sup> After making these and other necessary deductions, Mr. Burton’s initial monthly maintenance charge was \$78.46.<sup>[10]</sup>

4. In about July of 1997, Michelle Redfield, the Veterans Home’s Veterans Benefits Coordinator made an application on Mr. Burton’s behalf to the USDVA to enable him to obtain additional benefits in the form of pension benefits with aid and attendance. The reason for that request was an increase in the cost of his care resulting from his medical condition and disabilities.<sup>[11]</sup>

5. By December 1, 1997, Mrs. Burton was \$156.92 in arrears in paying her husband’s monthly maintenance fees, and on December 15, 1997, the Veterans Home sent her an Initial Notice of Involuntary Discharge.<sup>[12]</sup> Mrs. Burton subsequently paid those arrearages, and the Notice was withdrawn.<sup>[13]</sup>

6. On January 31, 1998, the Veterans Home notified Ms. Burton that her husband’s monthly maintenance charge would be reduced to \$74.14, effective January 1, 1998. The reason for the reduction was an increase in the deduction allowed for Mrs. Burton’s support.<sup>[14]</sup>

7. The USDVA awarded Mr. Burton \$1,241 per month in pension benefits with aid and attendance, effective June 1, 1998. It sent a letter to Mrs. Burton, as his personal representative, informing her of the award<sup>[15]</sup> but did not directly inform the Veterans Home of the award.<sup>[16]</sup> The letter notification to Mrs. Burton contained the following statements:

“Payment of this award will be made to you in a fiduciary capacity. You must agree to use the payments for the benefit of the veteran and any of the veteran’s dependents in your custody, as well as for your own benefit.” [Emphasis supplied.]

8. The USDVA issued Mrs. Burton the first benefit check of \$1,241 on July 1, 1998.<sup>[17]</sup> It issued a second check to her in the same amount on July 31, 1998.<sup>[18]</sup> Mrs. Burton did not inform the Veterans Home of the benefit award that the USDVA had

made to her husband or that she had begun receiving an additional \$1,241 per month in benefits for him beginning in July of 1998.<sup>[19]</sup>

9. Mrs. Burton believed that, as the veteran's wife, she was allowed to use the benefit award made by the USDVA for her own support, and she used most of the first two USDVA benefit checks to pay some personal indebtedness that she had incurred as the result of an earlier automobile accident.<sup>[20]</sup>

10. Unaware that Mrs. Burton had begun receiving benefit checks from the USDVA, the Veterans Home billed her for \$69.82 for her husband's July 1998 maintenance charge.<sup>[21]</sup> On August 3, 1998, Mrs. Burton paid the Veterans Home \$69.82 for that maintenance charge.<sup>[22]</sup> On September 1, 1998, Mrs. Burton paid the Veterans Home the \$74.14 that it had originally billed her for the August 1998 maintenance fee.<sup>[23]</sup>

11. In early August of 1998, the Veterans Home learned that on July 1, 1998, the USDVA had begun paying Mrs. Burton an additional \$1,241 for her husband's support.<sup>[24]</sup> Based on that information, the Veterans Home recalculated Mr. Burton's monthly maintenance fee, as it was required to do under Minnesota Rules<sup>[25]</sup> and paragraph 6 of the Admission Agreement.<sup>[26]</sup> On August 26, 1998, the Veterans Home gave Mrs. Burton written notice that the new maintenance charge for her husband, effective July 1, 1998, was \$1,327.76.<sup>[27]</sup> And on September 1, 1998, it billed her retroactively for the recalculated maintenance fee for the months of July and August and prospectively for the month of September 1998.<sup>[28]</sup>

12. On October 15, 1998, Mrs. Burton paid the Veterans Home \$1,200 toward the accumulating arrearages and the \$1,327.76 maintenance fee for October 1998.<sup>[29]</sup> As of that date she was \$3,962.76 in arrears in paying her husband's monthly maintenance charges.<sup>[30]</sup>

13. On October 19, 1998, Jeffrey Brown, the Veterans Home's Administrator, issued an initial notice that the Veterans Home would involuntarily discharge Mr. Burton for failure to comply with the obligation to pay monthly maintenance charges. The notice was sent to Mrs. Burton as his personal representative and responsible party.<sup>[31]</sup> Among other things, it advised her that if she did not request reconsideration within ten (10) days, an order would be issued discharging her husband from the Veterans Home.<sup>[32]</sup>

14. Mrs. Burton did not request a reconsideration of the initial notice.<sup>[33]</sup> Nevertheless, the Veterans Home still reconsidered its initial discharge order.<sup>[34]</sup>

15. On November 18, 1998, the Veterans Home notified Ms. Burton that Mr. Burton's monthly maintenance charge effective as of November 1, 1998, would be increased to \$1,377.16. That recalculation of the monthly maintenance charge was based on an increase in his USDVA pension benefit.<sup>[35]</sup>

16. On November 3, 1998, Mrs. Burton paid the Veterans Home \$1,327.76 toward the accumulating arrearages and the \$1,377.16 maintenance fee for November 1998.<sup>[36]</sup>

17. On November 19, 1998, the Veterans Home notified Mrs. Burton that it had upheld the initial notice discharging her husband for nonpayment of his maintenance charges; it also notified her of the right to request an administrative appeal of the discharge order.

18. On December 1, 1998, Mrs. Burton paid the Veterans Home \$1,327.76 toward the accumulating arrearages and the \$1,377.16 maintenance fee for December 1998.<sup>[37]</sup>

19. On January 20, 1999, the Veterans Home notified Ms. Burton that Mr. Burton's monthly maintenance charge effective as of January 1, 1999, would be reduced to \$1,057.89. The reason for the reduction was an increase in the deduction allowed for Mrs. Burton's support.<sup>[38]</sup>

20. Mrs. Burton requested an administrative appeal of the order discharging her husband from the Veterans Home, and on January 22, the Veterans Home issued the Notice of and Order for Hearing that began this administrative appeal and contested case proceeding.

21. The Veterans Home did not receive any payment toward Mr. Burton's accumulating maintenance fees in January 1999.<sup>[39]</sup>

22. On February 2, 1999, Mrs. Burton paid the Veterans Home \$1,377.16 toward the accumulating arrearages and the \$1,057.89 maintenance fee for February 1999. As of that date, her husband's monthly maintenance charges were \$4,750.78 in arrears.<sup>[40]</sup>

23. On March 2, 1999, Mrs. Burton paid the Veterans Home \$2,115.78 toward the accumulating arrearages and the \$1,057.89 maintenance fee for March 1999. As of that date, her husband's monthly maintenance charges were \$3,692.89 in arrears.

24. Mrs. Burton wants her husband to remain at the Veterans Home, but she lacks the means to pay the accumulated arrearages in her husband's monthly maintenance charges in full. She is willing to continue reducing the amount of those arrearages, as her income allows.<sup>[41]</sup>

25. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. Minnesota law<sup>[42]</sup> gives the Administrative Law Judge and the Board authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. Mr. Burton received proper notice of his proposed discharge and of the time and place of the hearing in this administrative appeal proceeding.

3. The Veterans Home and the Board have complied with all of Minnesota law's substantive and procedural requirements.

4. Another provision of the Veterans Homes Board's rules requires a veterans home to institute proceedings to discharge a resident "when an account is delinquent . . . ."<sup>[43]</sup> That rule goes on to define an account as delinquent "if a resident willfully refuses or willfully fails to pay the bill by the due date." Finally, the rule provides that:

For purposes of this subpart, "willful refusal or willful failure to pay" means a situation in which:

A. the decision of whether to pay is completely within the control of the resident or the resident's legal representative; or

B. a resident or the resident's legal representative has the ability or resources to pay the maintenance charge and fails to pay.

5. The Board's rules require a veterans home to institute proceedings to discharge a resident who "fails or refuses to comply with payment obligations in the admission agreement . . . ."<sup>[44]</sup>

6. Under Minnesota law,<sup>[45]</sup> the Veterans Home has the burden of proof to establish that Mr. Burton is delinquent in the payment of maintenance charges or that he has refused or failed to pay those charges and that he should therefore be discharged.

7. When Mrs. Burton began receiving pension benefit checks on her husband's behalf from the USDVA in July 1998, she failed to notify the Veterans Home that there was a change in her husband's financial condition, as the Admission Agreement required. And Mrs. Burton's failure to give the Veterans Home that notification was a violation of the Admission Agreement.

8. Based on the notification from the USDVA that she was allowed to use Mr. Burton's benefit payments "for the benefit of . . . any of the veteran's dependents in your custody, as well as for your own benefit,"<sup>[46]</sup> Mrs. Burton's use of the first two monthly payments to pay off existing indebtedness was done in a good faith belief that it was proper for her to do so.

9. When Mrs. Burton received notice on August 26, 1998, of the increased maintenance charge for July and August 1998,<sup>[47]</sup> she no longer had the ability or resources to pay those maintenance charges and the decision whether to pay those increased charges was then completely out of her control. Her failure to pay was therefore not willful, and Mr. Burton's account is not delinquent within the meaning of the rules.

10. Mrs. Burton, acting on her husband's behalf, has failed to pay \$3,692.89 in monthly maintenance charges that she was required to pay under the Admission Agreement, there are therefore grounds for instituting discharge procedures under Minnesota Rules, part 9050.0200, subpart 3A.

11. The legislature has enacted a statute pertaining to arrearages in maintenance charges.<sup>[48]</sup> It provides that:

[r]esidents are liable for paying all of their overdue maintenance charges. Overdue maintenance charges incurred after May 1, 1990, may be charged interest according to section 334.01. A resident owing overdue maintenance to the state of Minnesota for charges incurred prior to May 1, 1990, may continue to stay in the home if the resident enters into an agreement, including a payment schedule, with the administrator for the payment of arrearages and abides by the agreement. Residents who do not promptly pay maintenance or who do not abide by their agreements to pay overdue maintenance to the state of Minnesota may be discharged from the home. The payment schedule agreed to between the administrator and the resident must provide for the prompt payment of the overdue maintenance owed by the resident, but it must not reduce the resident's personal needs allowance below that which is provided for in the administrative rules of the facility.

12. The Veterans Home and Mrs. Burton have been unable to enter into an agreement for the payment of arrearages that includes a payment schedule.

13. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge HEREBY RECOMMENDS that the Board affirm the administrator's discharge order for failure of Mr. Burton to pay maintenance charges.

Dated this 28th day of April 1999.

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BRUCE H. JOHNSON  
Administrative Law Judge

**NOTICE**

Under Minnesota law,<sup>[\[49\]](#)</sup> the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.



## MEMORANDUM

The Veterans Home presented evidence that in December 1997 Mrs. Burton was \$156.92 in arrears in paying her husband's monthly maintenance fees. Based on that, it suggested that her later failure to notify the Veterans Home that she was receiving USDVA benefit checks and to pay the increased maintenance fee that resulted from that additional income was willful. But the Administrative Law Judge is not persuaded that Mrs. Burton willfully tried to divert monies that should have gone to the Veterans Home to her own use. She did pay the first small arrearage in full. And the letter from the USDVA did suggest that she was authorized to use her husband's new pension benefit checks for her own support and benefit. Finally, it is not improbable that a person of Mrs. Burton's age and circumstances could forget what was in paragraph 6 of the Admission Agreement and could assume that the USDVA itself had notified the Veterans Home of the new benefit payments. In short, grounds for discharge because of a delinquent account do not exist under Minnesota Rules, part 9050.0520, subpart 2.

But grounds for discharge do exist under Minnesota Rules, part 9050.0200, subpart 3, which requires the initiation of discharge proceedings when a "resident or resident's legal representative fails . . . to comply with the payment obligations in the admission agreement." So regardless of Mrs. Burton's apparent misunderstandings, existing law still required the Veterans Home to start proceedings to discharge her husband for nonpayment of the full amount of his monthly maintenance charges.<sup>[50]</sup>

While the legislature specifically gives veterans home administrators authority to enter agreements for payments of arrearages for charges incurred prior to May 1, 1990, the law is silent on whether administrators can enter into agreements like that for charges incurred after May 1, 1990, which is the situation here. It is therefore uncertain whether the Board has the authority to enter into an agreement with a payment schedule for payment of Mr. Burton's arrearages, and that issue has not been presented to the Administrative Law Judge for a decision.

Since the Board clearly has the legal authority to discharge Mr. Burton from the Veterans Home for failure to pay agreed upon maintenance charges, there is no legal basis for setting aside the discharge order. However, given the circumstances of this case, the Administrative Law Judge hopes that the parties will strive to fashion a less drastic solution to the problem that has arisen here.

B.H.J.

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<sup>[1]</sup> Minn. Stat. § 14.61. (Unless otherwise specified, all references to Minnesota Statutes are to the 1998 edition.)

<sup>[2]</sup> Exhibit 4; testimony of Jeffrey Brown and Arlene Burton.

<sup>[3]</sup> Testimony of Jeffrey Brown.

<sup>[4]</sup> Testimony of Jeffrey Brown, Michelle Redfield, and Arlene Burton; Exhibit 4.

<sup>[5]</sup> Exhibit 1.

<sup>[6]</sup> Exhibit 1.

<sup>[7]</sup> Minnesota Rules, Chapter 9050. (Unless otherwise specified, all references to Minnesota Rules are to the 1997 edition.)

<sup>[8]</sup> Exhibit 11; see Minnesota Rules, part 9050.0750.

<sup>[9]</sup> Exhibit 11.

<sup>[10]</sup> Exhibit 11.

<sup>[11]</sup> Testimony of Michelle Redfield.

<sup>[12]</sup> Exhibit 11.

<sup>[13]</sup> Exhibit 7, p. 9.

<sup>[14]</sup> Exhibit 3.

<sup>[15]</sup> Exhibits 4 and A.

<sup>[16]</sup> Testimony of Michelle Redfield.

<sup>[17]</sup> Exhibit 4.

<sup>[18]</sup> Exhibit 4.

<sup>[19]</sup> Testimony of Michelle Redfield and Arlene Burton.

<sup>[20]</sup> Testimony of Arlene Burton.

<sup>[21]</sup> The \$74.14 per month specified in Exhibit 3, less a \$4.32 credit from June 1998. (Exhibit 7, p. 9.)

<sup>[22]</sup> Exhibit 7, p. 9.

<sup>[23]</sup> Exhibit 7, pp. 8-9.

<sup>[24]</sup> Testimony of Michelle Redfield.

<sup>[25]</sup> Minnesota Rules, parts 9050.0560—0570.

<sup>[26]</sup> Exhibit 1.

<sup>[27]</sup> Exhibit 5.

<sup>[28]</sup> Exhibit 7, p. 8.

<sup>[29]</sup> Exhibit 7, p. 7.

<sup>[30]</sup> Exhibit 7, pp. 6-7.

<sup>[31]</sup> Exhibit 8.

<sup>[32]</sup> Exhibit 8.

<sup>[33]</sup> Exhibit 9.

<sup>[34]</sup> Exhibit 9.

<sup>[35]</sup> Exhibit 6.

<sup>[36]</sup> Exhibit 7, p. 7.

<sup>[37]</sup> Exhibit 7, p. 5.

<sup>[38]</sup> Exhibit 10.

<sup>[39]</sup> Exhibit 7, p. 4. Mrs. Burton testified that the check had become lost in the mail. It is uncertain whether she ever stopped payment on the check and issued a new one.

<sup>[40]</sup> Exhibit 7, p. 2.

<sup>[41]</sup> Testimony of Arlene Burton.

<sup>[42]</sup> Minnesota Statutes, sections 14.50 and 198.03 and Minnesota Rules, part 9050.0230.

<sup>[43]</sup> Minnesota Rules, part 9050.0520, subpart 2.

<sup>[44]</sup> Minnesota Rules, part 9050.0200, subpart 3A.

<sup>[45]</sup> Minnesota Rules, part 1400.7300, subpart 5.

<sup>[46]</sup> Exhibit A.

<sup>[47]</sup> Exhibit 5.

<sup>[48]</sup> Minnesota Statutes, section 198.03, subdivision 3.

<sup>[49]</sup> Minnesota Statutes, section 14.62, subdivision 1.

<sup>[50]</sup> See Minnesota Rules, part 9050.0200, subpart 3 and part 9050.0520, subpart 2.